



Paper No. 3

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OFFICE OF PETITIONS

In re Application of
Stewart et al.
Application No. 09/940,494
Filed: August 29, 2001
For: Process and Apparatus for Coagulating
and Drying Latex

:
:
: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)

This is in response to the petition filed August 29, 2001, pursuant to the provisions of rule 37 CFR 1.47(a).

The petition is dismissed.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition under 1.47(a)," and should only address the deficiencies noted below. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor.

The petition lacks item (1) set forth above.

As to item (1), the applicable statute (35 USC 116) requires that a "diligent effort" have been expended in attempting to find or reach the nonsigning inventor. See MPEP 409.03(a). The showing currently fails to demonstrate, with a documented showing, that a diligent effort was made to find or locate the nonsigning inventors.

In this regard, petitioner requests that the above-identified application be accorded rule 47(a) status on behalf of the available joint inventors and on behalf of a "co-inventor who could not be located". Petitioner has provided the names and last known addresses of the two joint inventors whose signatures are missing from the declaration. However, no statement of facts or evidence in support of the petition

has been provided to show that inventors Ralph Spearman and Norhisham Sanusi have refused to sign the declaration after having been presented with the application papers or either could not be located to join in the application.

Where statements are made that the inventors could not be located, these statements must be supported by documentary evidence of the attempts made to locate the joint inventors. Was a complete copy of the application papers mailed to the last known addresses of the nonsigning inventors? Did the nonsigning inventors receive a complete copy of the application papers? Does petitioner have access to a current address, forwarding address, or an address of the nearest living relative of the nonsigning inventors? What does inspection of the phone directories for those address locations reveal? Has petitioner attempted to locate the nonsigning inventors in the Regional or National Registry(s)? If the nonsigning inventors are located, then a complete copy of the application papers (specification, claims, drawings, and oath or declaration) should be mailed to their addresses, return receipt requested, along with a cover letter of instructions which includes a deadline for returning the executed documents or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. If the papers are returned and all other attempts to locate or reach the inventors, e.g., through-email, the telephone, etc. fail, then applicant will have established that the inventors cannot be reached or have refused to join in the application. The statements of facts must be signed, where at all possible, by person having firsthand knowledge of the facts recited therein.

If the inventors are located and the inventors orally refuse to join in the application, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. If, on the other hand, petitioner receives an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

In order to expedite consideration of the petition under 37 CFR 1.47(a), petitioner may wish to consider submitting the renewed petition by facsimile transmission to the telephone number indicated below and to the attention of Latrice Bond.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Office of Petitions
 Assistant Commissioner for Patents
 Box DAC
 Washington, D.C. 20231

By FAX: (703) 308-6916
 Attn: Office of Petitions

By hand: Office of Petitions
Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries related to this decision should be directed to Latrice Bond at (703) 308-6911.



Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy



Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy